United States Court of Appeals

for the

District of Columbia Circuit

TRANSCRIPT OF RECORD

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Court of Appeals of the District of Columbia.

OCTOBER TERM, 1919.

No. 3323. 607

DORA THOMPSON, APPELLANT,

vs.

GEORGE WEEMS WILLIAMS AND J. J. DOYLE, TRUSTEES.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

FILED OCTOBER 17, 1919.

PRINTED NOVEMBER 22, 1919.

Court of Appeals of the District of Columbia.

OCTOBER TERM, 1919.

No. 3323.

DORA THOMPSON, APPELLANT,

vs.

GEORGE WEEMS WILLIAMS AND J. J. DOYLE, TRUSTEES, APPELLEES.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., NOVEMBER 3, 1919.

Court of Appeals of the District of Columbia

No. 3323.

DORA THOMPSON, Appellant,

vs.

GEORGE WEEMS WILLIAMS et al., Trustees.

a Supreme Court of the District of Columbia.

At Law. No. 62587.

GEORGE WEEMS WILLIAMS and J. J. DOYLE, Trustees, Plaintiffs,

vs.

DORA THOMPSON, Defendant.

UNITED STATES OF AMERICA,
District of Columbia, ss:

Be it remembered, That in the Supreme Court of the District of Columbia, at the City of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had, in the above-entitled cause, to-wit:

1 *Complaint in the Municipal Court.*

Filed June 30, 1919.

In the Supreme Court of the District of Columbia.

Law. No. 62587.

GEORGE WEEMS WILLIAMS and J. J. DOYLE, Trustees, Plaintiffs,

vs.

DORA THOMPSON, Defendant.

STATE OF MARYLAND,
County of Baltimore, To wit:

Your Complainant- George Weems Williams and J. J. Dovle, being first duly sworn according to law, states that they are entitled to the possession of the premises No. 814 11th Street, Northwest,

Washington, located in the District of Columbia, and that the same is unlawfully detained from them and held without right by the defendant Dora Thompson, to whom the complainants' vendor had heretofore rented the said premises and whose tenancy and estate has been determined by the service of a due notice to quit. Complainants therefore pray that a Summons be issued, commanding the defendant to appear and show cause why judgment should not be given against her for the restitution of the possession of said premises, and costs of this suit.

GEORGE WEEMS WILLIAMS.
J. J. DOYLE.

Subscribed and sworn to before me this 29th day of May, A. D. 1919.

WILLIAM L. SCHULZ,
Notary Public. [SEAL.]..

2 *Summons.*

* * * * * * *

The President of the United States to the defendant, Miss Dora Thompson, Greeting:

You are hereby summoned to appear in this Court on the 14 day of June A. D. 1919, at 10 o'clock A. M., to answer the plaintiffs' complaint and show cause why judgment should not be given against you for the restitution of the possession of the premises described in the complaint under oath filed herein by said plaintiffs George Weems Williams and J. J. Doyle, Trustees, and costs of this suit, and in case of your failure so to appear and answer the suit will be proceeded with as in case of default.

Witness the Honorable Judges of said Court this 3d day of June, 1919.

BLANCHE NEFF,
Clerk. [SEAL.]
By R. H. COLLINS,
Assistant Clerk.

$1.00 Pd. Clerk.

Marshal's Return.

6/3/1919.

Summoned as within directed.

MAURICE SPLAIN,
U. S. Marshal.
By ESKRIDGE,
Deputy Marshal.

3 *Certificate of Municipal Court on Appeal.*

Filed June 30, 1919.

* * * * * * *

Date		Proceedings.
1919.		Plaintiffs' attorney—S. F. Taliaferro.
		Defendant's " —J. I. Peyser.
June	3rd.	Sworn complaint and bond filed.
"	"	Summons and copy issued returnable June 14, 10 a. m.
"	4th.	Summons returned "summoned as within directed."
"	14th.	Trial—witnesses sworn.
"	20th.	Judgment for plaintiff for possession of the within described premises with costs. Appeal noted in open Court.
"	"	Appeal, undertaking on, with Fidelity & Deposit Co. of Md. surety, approved and filed.
"	30th.	Appeal, record on and papers filed with Clerk of Supreme Court, D. C. and notice sent to defendant's attorney.

This is to certify, that the foregoing is a true copy of the Docket Entries and of all the proceedings had before the said Court in the above cause, and that the annexed documents are all the original papers filed in said cause.

Witness, the Honorable Judges of said Court this 30th day of June, A. D., 1919.

BLANCHE NEFF,
Clerk.

Costs paid by Plaintiff $3.10
Costs paid by Defendant $1.00

(Endorsed.)

The Clerk will please docket this appeal, enter my appearance, and issue Summons to Appellee.

J. I. PEYSER,
Att'y for Appellant.

4 *Affidavit of Merit of Thomas Mason, Agent of Plaintiffs.*

Filed July 14, 1919.

* * * * * * *

DISTRICT OF COLUMBIA, *ss:*

Thomas Mason, being first duly sworn, deposes and says:

That he is the duly authorized agent of the plaintiffs, George Weems Williams and J. J. Doyle, Trustees, in the above entitled cause and makes this affidavit as such agent.

That the plaintiffs are appellees in the above-entitled case which is the appeal by the defendant, Dora Thompson from Landlord and Tenant case No. 173353 in the Municipal Court, District of Columbia, in which case a judgment for possession of premises No. 814 11th Street, N. W., Washington, D. C., was entered in favor of the plaintiffs on the — day of June A. D. 1919.

That the plaintiffs, George Weems Williams and J. J. Doyle hold the fee simple title to the above described property as trustees for the Terminal Real Estate Company of Baltimore City and as such trustees have brought suit for possession of the hereinbefore described real estate.

The fact is, and the plaintiffs upon the trial of this case offer and expect to prove, that the Terminal Real Estate Company of Baltimore City is a corporation organized and existing under the laws of Maryland whose main business is to establish and operate railroad terminal stations. That the entire capital stock of the Terminal Real Estate Company of Baltimore is owned by the Washington Baltimore and Annapolis Electric Railroad Company,
5 a corporation organized and existing under the laws of Maryland and operating an interurban electric railroad between Washington, District of Columbia, Baltimore Maryland, and Annapolis, Maryland, and intermediate points. That practically all of the officers of the two corporations are the same.

That for some time past the passenger cars of the Washington, Baltimore and Annapolis Electric Railroad Company have run into Fifteenth Street and New York Avenue, N. W., Washington, D. C., where they remained standing upon the public street until beginning their return trip to Maryland; that the traffic conditions at Fifteenth Street and New York Avenue, N. W., have become exceedingly congested and acute so much so that the Public Utilities Commission of the District of Columbia after a full inquiry into the matter a few months ago authorized and directed the said railroad company to secure a site and build a terminal in the District of Columbia where better passenger service could be given to the public and where its passenger cars could between trips be taken off of the public street and housed in the said railroad company's own terminal station. That in pursuance of the authority and direction given by the Public Utilities Commission of the District of Co-

lumbia, the said railroad company has acquired a large tract of land being about one-half of a city block, lying between 11th Street, 12th street and New York Avenue, N. W., at a cost of several hundred thousand dollars, where it proposes to build a large railway terminal station. The real estate which comprises a number of separate lots and buildings was purchased by the Terminal Real Estate Company of Baltimore City, a subsidiary company of the Washington,
6 Baltimore and Annapolis Electric Railroad Company and title thereto taken in the names of George Weems Williams and J. J. Doyle, Trustees, who are both officers and directors of the Terminal Real Estate Company of Baltimore City and of the Washington, Baltimore and Annapolis Electric Railroad Company.

The price paid for the property occupied by the defendant herein was approximately $15,000. An amicable agreement has been reached between the purchasers and the tenants of practically all of the real estate purchased for terminal station purposes and the only case which has been appealed to the Supreme Court of the District of Columbia is the one in which this affidavit is filed. It is of the utmost importance to the public that the construction of the terminal railway station be expedited as much as possible in accordance with the wishes of the Public Utilities Commission of the District of Columbia. Therefore, the owners of the property herein referred to, necessarily require the same for their own occupancy as hereinbefore set forth. Not only will there result much inconvenience to the traveling public but serious and much damage will result to the owners of this property if by reason of delay by litigation in obtaining any separate one of this group of houses purchased the entire construction work is delayed.

There is hereto attached the following exhibits which it is prayed may be read and considered together with this affidavit:

7 Copy of notice to vacate dated Mar. 3, 1919, addressed to Miss Dora Thompson, 814 11th Street, N. W., Washington, D. C., signed by George Weems Williams and J. J. Doyle, Trustees, and calling upon the tenant to vacate the property May 15, 1919. Being Exhibit A.

Lease between H. R. Howenstein Company and Dora Thompson to dwelling No. 814—11th Street, N. W., Washington, D. C., for the term of twelve months from the 15th day of February, 1917, which lease was on December 5, 1918, assigned to Thomas J. Fisher and Company and thereafter assigned on February 17, 1919, to George Weems Williams and J. J. Doyle, Trustees. Being Exhibit B.

Deed dated February 11, 1919, by and between Annie R. Riggles and Ruel S. McGill, conveying lots Nos. 24 and 25, in L. H. Schneider's subdivision of part of Square No. 318 being recorded February 14, 1919, in Liber 4143 at Folio 407 of the Land Records of the District of Columbia. Lot No. 24 in Square No. 318, being otherwise known and described as No. 814—11th Street, N. W., Washington, D. C. Being—Exhibit C.

Deed dated 14th day of February, 1919, between Ruel S. McGill and James J. Doyle and George Weems Williams, conveying lots Nos. 24 and 25 in L. H. Schneider's subdivision of part of Square No. 318, which deed was recorded on February 14, 1919, in Liber 4143 at Folio 411 of the Land Records of the District of Columbia. Being—Exhibit D.

The fact is, and the plaintiffs expect to prove upon a trial of this case that the property numbered 814 11th Street, N. W., Washington, D. C., as shown by the records was heretofore owned by Annie R. Riggles who through her agents the H. R. Howenstein Company leased the same to the defendant, Dora Thompson, as a
8 tenant who has *has* been ever since and is now the occupant of the property. That the said Annie R. Riggles conveyed the property to Ruel S. McGill who in turn conveyed the same to Doyle and Williams, Trustees. That the lease of the premises was assigned by the H. R. Howenstein Company to Thomas J. Fisher and Company and thereafter assigned to Doyle and Williams, Trustees.

The original of the notice to quit from Williams and Doyle to Dora Thompson was duly served upon the defendant, Dora Thompson, on April 14, 1919, and thereafter suit for possession brought in the Municipal Court of the District of Columbia which suit after a trial in open court and extensive argument by counsel for both parties, resulted, as heretofore set out, in judgment for possession in favor of the plaintiff.

Plaintiffs and affiant are advised by counsel and therefore aver that because of the foregoing facts and circumstances they are entitled to a summary judgment for possession by this Honorable Court.

THOMAS MASON.

Subscribed and sworn to before me this 14th day of July, A. D. 1919.

[SEAL.] HARRIET E. ALDEN,
Notary Public, D. C.

My Commission expires Nov. 4, 1920.

THOMAS P. LITTLEPAGE,
SIDNEY F. TALIAFERRO,
Att'ys for Plaintiffs.

Service of copy of the foregoing affidavit acknowledged and accepted this 14th day of July, 1919.

J. I. PEYSER,
P. H.
Attorney for Defendant.

9 EXHIBIT A.

To Miss Dora Thompson,
No. 814 11th Street, Northwest,
Washington, D. C.:

As we are purchasers of and necessarily require for our own occupancy, and are therefore desirous to have possession of the house and premises known as No. 814—11th Street, Northwest, in the City of Washington, District of Columbia, which you now hold, we hereby give you notice to remove from and quit said premises on the day succeeding the expiration of your next month's tenancy, to wit: May 15th 1919.

GEORGE WEEMS WILLIAMS,
J. J. DOYLE,
Trustees.

A notice, of which the foregoing is a true and exact copy, was served by the undersigned on Miss Dora Thompson on above premises, on April 14th 1919, at 6.55 o'clock P. M.

WM. L. MILLER.

10 EXHIBIT B.

This Agreement, Made this — day of —— in the year 1917, by and between H. R. Howenstein Company party of the first part, and Dora Thompson party of the second part,

Witnesseth, That the said party of the first part has let and leased, and does hereby let and lease unto the said party of the second part, her executors and administrators, all that certain house messuage, tenement and premises situate in the City of Washington, District of Columbia, and known as Dwelling No. 814 11th Street, Northwest for the term of twelve months commencing on the 15th day of February 1917, to be fully completed and ending on the 14th day of February, 1918, at and for the annual rent of Six Hundred Sixty dollars, payable in equal monthly installments of Fifty-five dollars in advance payable on the 15th day of each and every month, at 1314 F street, N. W., the first payment of Fifty-five dollars to March 15th, 1917, to be made on the 29th day of January, 1917.

And, The said party of the second part, for her hears, executors, administrators, does hereby covenant to and with the said party of the first part that he the said party of the second part shall and will during the said term pay unto the said party of the first part the rent hereby reserved in the manner hereinbefore mentioned without any deduction whatsoever, and without any obligation on the part of the said party of the first part to make any demand for the same, and further that -he will not use said premises for any unlawful purpose, but will occupy the same as a Private Dwelling and will not sub-let nor assign the said premises, or any part thereof,
11 nor transfer possession thereof to any person or persons, nor carry on any business therein except as a private dwelling

without the written consent of the said party of the first part had and obtained, and further that he the said party of the second part will pay the water rent, electric light and gas bills as the same may respectively become due and chargeable against the said premises during the term aforesaid. And further, that no gasoline will be kept or allowed on said premises, and will at the end of the said term deliver up the said premises in the like good order in which they are now, ordinary wear and tear and casualties by fire only excepted, to the said party of the first part who shall and may thereupon re-enter, provided that if at least ten days before the expiration of the term aforesaid, the said party of the first part shall either leave on the premises aforesaid, or serve on the lessee aforesaid, a notice in writing that said premises will be required at the end of said term, then, in the happening of either of said events, the said party of the first part may without further notice, immediately re-enter and possess said premises; but in the event that said party of the first part shall not give said notice as aforesaid, then, unless the tenant shall immediately surrender said premises on the day of the end of said term, the said tenant shall by virtue of this agreement become a tenant by the month, at the rental per month of the monthly instalments of rent to be paid as aforesaid on the yearly tenancy, commencing said monthly tenancy with the first day next after the end of said term; which said monthly tenancy shall be subject to all conditions and covenants of the said lease as though the same had originally been a monthly instead of a yearly tenancy,
12 and shall give to the said party of the first part at least thirty days' notice of any intention to remove from said premises, and the said tenant by the month shall not be entitled to any notice to quit in the event said rent is not paid in advance without demand, the usual 30 days' notice being hereby expressly waived.

And the said party of the second part further covenants and agrees that if during the continuance of said yearly tenancy, or if after the commencement of said monthly tenancy, if any arise as aforesaid, she shall fail to pay any one of said monthly instalments of rent reserved as aforesaid when and as the same shall respectively become due and payable, although no demand may have been made for the same, or if she shall in any other manner or respect fail to keep, or violate any one of the covenants and agreements hereinbefore made by the said party of the second part, then it shall be lawful for the said party of the first part at election and option, to re-enter and recover possession of said premises by means of a seven days' summons under the provisions of the Code of Laws for the District of Columbia, regulating proceedings between landlords and tenants, or by such other legal process as may at that time be in operation in like cases, the said party of the second part hereby expressly waiving all right to thirty days' or other notice to quit should the said party of the first part elect to proceed to recover possession as aforesaid.

And it is further provided, That if under the provisions of this lease and agreement a seven days' summons shall be served, and a

compromise or settlement shall be made, either before or
13 after judgment whereby the said part- of the second part shall be allowed to retain said premises, such proceedings shall not constitute a waiver of any covenant herein contained or of the lease itself, or of the monthly tenancy if that be in force at such time or times; and it is further understood and agreed that the covenants and agreements contained in the within agreement to be performed by the respective parties are binding on the said parties and their legal representatives, and that no waiver of any breach of any covenant herein shall be construed to be a waiver of the covenant itself or of any subsequent breach thereof.

In testimony whereof, The respective parties hereto have hereunto set their hands and seals in duplicate the day and year first hereinbefore written.

H. R. HOWENSTEIN CO.,
By H. R. HOWENSTEIN, [SEAL.]
Treasurer.
DORA THOMPSON. [SEAL.]

Signed, sealed and delivered in the presence of:

——— ———.
——— ———.

In consideration of the letting of the premises above described, and for the sum of one dollar — do hereby become surety for the punctual payment of the rent and performance of the covenants in the within written agreement mentioned, to be paid and performed by ——— ———, and if any default shall be made therein — hereby promise and agree to pay unto ——— ——— such sum or sums of money as will be sufficient to make up such deficiency, and fully satisfy the conditions of the said agreement, without requir-
14 ing any notice of non-payment or proof of demand being made.

Given under — hand and seal the — day of ———, 19—.

——— ———.
——— ———.

Witness at signing:

——— ———.
——— ———.

(Endorsed.)

No. —.

Lease

Between

H. R. Howenstein Co.

And

Dora Thompson.

Premises 814 11th Street, N. W.
Period One Year.
Rent, $55:—
Due 15th instant, in advance.
First Payment February 15, 1917.

Dec. 5, 1918.

For value received we hereby assign and set over unto Thos. J. Fisher & Co. all our right, title and interest in the within agreement.

H. R. HOWENSTEIN CO., INC.
By E. M. LOTT.

2/17/19.
Washington, D. C.

For valuable and other consideration, we hereby assign all our right, title and interest in the within contract to James J. Doyle & George Weems Williams, Trustees, to take effect Feb'y 14, 1919.

THOMAS J. FISHER & CO., INC.,
By CHAS. R. BROWN, JR.,
Assistant Secretary.

15 Three Internal Revenue Stamps.

EXHIBIT C.

This deed, Made this Eleventh day of February in the year one thousand nine hundred and nineteen by and between Annie R. Riggles, widow, of the District of Columbia, party of the first part, and Ruel S. McGill, of the District of Columbia, party of the second part;

Witnesseth, That the said party of the first part, for and in consideration of the sum of Ten (10) Dollars to her paid by the said party of the second part, does hereby grant and convey unto the said party of the second part, in fee simple, the following described land and premises, with the improvements, easements, and appurte-

nances thereunto belonging, situate in the City of Washington, District of Columbia namely:

Lots numbered Twenty-four (24) and Twenty-five (25) in L. H. Schneider's subdivision of part of Square numbered Three hundred and eighteen (318), as per plat of said subdivision recorded in Liber #12, folio 160, of the Records of the Office of the Surveyor of the District of Columbia.

To have and to hold the said described land and premises, with the improvements, easements and appurtenances, unto and to the use of the said party of the second part, his heirs and assigns, in fee-simple.

And the said party of the first part hereby covenants to warrant specially the property hereby conveyed, and to execute such further assurances of said land as may be requisite.

In testimony whereof, on the day and year first hereinbefore written, the said party of the first part has hereunto set her hand and seal.

ANNIE R. RIGGLES. [SEAL.]

Signed, sealed and delivered in the presence of

LOUISE F. DYER.

16 DISTRICT OF COLUMBIA, *To wit:*

I, Louise F. Dyer, a Notary Public in and for the said District do hereby certify that Annie R. Riggles, widow, party to a certain Deed bearing date on the 11th day of February 1919, and hereto annexed, personally appeared before me in said District, the said Annie R. Riggles being personally well known to me as the person who executed the said Deed, and acknowledged the same to be her act and deed.

Given under my hand and seal this 11th day of February 1919.

LOUISE F. DYER,
Notary Public, D. C.

[SEAL.]

One Internal Revenue Stamp.

EXHIBIT D.

This Deed, Made this Fourteenth day of February in the year one one thousand nine hundred and nineteen, by and between Ruel S. McGill, unmarried, of the District of Columbia, party of the first part, and James J. Doyle and George Weems Williams, of the City of Baltimore, State of Maryland as Trustees as hereinafter set forth, parties of the second part;

Witnesseth, That the said party of the first part, for and in consideration of the sum of Ten (10) Dollars to him paid by the said parties of the second part, does hereby grant and convey unto

the said parties of the second part, in fee simple, as Trustees as hereinafter set forth, the following described land and premises, with the improvements, easements and appurtenances thereunto belonging, situate in the City of Washington, District of Columbia, namely:—

Lots numbered Twenty-four (24) and Twenty-five (25) in L. H. Schneider's subdivision of part of Square numbered Three hundred and eighteen (318), as per plat of said subdivision recorded in Liber #12 folio 160, of the Records of the Office of the Surveyor of the District of Columbia.

Subject to a certain Deed of Trust securing the payment of the sum of Twenty thousand (20,000) Dollars.

To have and to hold the said described land and premises, with the improvements, easements and appurtenances unto and to the use of the said parties of the second part, in fee-simple, in and upon the following uses and trusts, that is to say: In Trust and with full power in said parties of the second part, or the survivor, to subdivide, sell, lease or encumber, by way of Deed of Trust or Mortgage, the said described real estate or any part thereof in such manner and for such quality and quantity of estate as the Terminal Real Estate Company of Baltimore City may authorize and direct, such direction to be sufficiently evidenced by the signature of the President or Vice-President of said Company to any deed, deed of trust, mortgage or conveyance of said real estate and without any obligation on the part of any purchaser or purchasers or person or persons lending money to see to the proper application of the purchase money or money lent.

And the said party of the first part hereby covenants to warrant specially the property hereby conveyed (excepting, however, as to those claiming under the Deed of Trust aforesaid), and to execute such further assurances of said land as may be requisite.

In testimony whereof, on the day and year first hereinbefore written, the said party of the first part has hereunto set his hand and seal.

RUEL S. McGILL. [SEAL.]

Signed, sealed and delivered in the presence of
ALBERT W. SIOUSSA.

DISTRICT OF COLUMBIA, *To wit:*

I, Albert W. Sioussa, a Notary Public in and for the said District of Columbia, do hereby certify that Ruel S. McGill, unmarried party to a certain Deed bearing date on the 14th day of February, A. D., 1919, and hereto annexed, personally appeared before me in the said District of Columbia, the said Ruel S. McGill being personally well-known to me as the person who executed the said Deed and acknowledged the same to be his act and deed.

Given under my hand and seal this 14th day of February, A. D., 1919.

ALBERT W. SIOUSSA,
Notary Public, D. C.

[SEAL.]

(Endorsed.)

Received for Record on the 14th day of February A. D.
19 1919 at 2-40 o'clock P. M., and recorded in Liber No. 4143 at Folio 411 one of the Land Records for the District of Columbia, and examined by

R. W. DUTTON,
Deputy Recorder of Deeds,
Dist. of Col.

Motion to Dismiss Affidavit of Merit.

Filed July 24, 1919.

* * * * * * *

Now comes the defendant and moves the Court to dismiss the affidavit of merit, on the grounds:

First. That the said plaintiffs have failed to comply with Paragraph 25 of Law Rules of the Supreme Court of the District of Columbia, in not furnishing the defendant or counsel, copies of Exhibits A to D inclusive.

Second. That the defendant is entitled to a trial by jury according to the Code of Laws of the District of Columbia, Rule 19 of the Supreme Court of the District of Columbia being inconsistent with Section 1232 of the said code.

J. I. PEYSER,
Attorney for Defendant.

20 *Affidavit of Defense.*

Filed July 24, 1919.

* * * * * * *

CITY OF WASHINGTON,
District of Columbia, ss:

Dora Thompson, being first duly sworn, deposes and says:

That she is the defendant in the above entitled cause, wherein George Weems Williams and J. J. Doyle, Trustees, are named as the plaintiffs; that she has a just and meritorious defense to the cause of action set forth in the affidavit of merit filed by the plaintiffs. She admits that she is in possession of premises No. 814 Eleventh

Street, Northwest, and peacefully went into possession of said premises under and by virtue of an agreement by and between H. R. Howenstein Company and herself. That the affidavit filed by the plaintiffs does not set forth a cause of action that would justify judgment under Rule 19, and further that Rule 19 deprives the defendant of trial by jury and is inconsistent with Section 1232 of the Code of Law of the District of Columbia. The affidavit filed by the plaintiffs states that they are Trustees for the Terminal Real Estate Company of Baltimore, Maryland, whereas the Public Utilities Commission of the District of Columbia authorized and directed the Washington, Baltimore & Annapolis Railroad Company (a separate and distinct company) to secure a site and build a terminal in the District of Columbia. That the affidavit filed is therefore not filed by the bona fide owner and under the Saulsbury Resolution of May 31, 1918, and amendments thereto approved July
21 11, 1919, gives the tenant in possession the right to remain until three months after a treaty of peace is concluded between the Imperial German Government and the United States. The record does not show that the plaintiffs require the property for their own occupancy. That the defendant conducts a rooming house where she is housing 6 persons employed in the United States Government and by reason of the scarcity of houses in the District of Columbia, she is absolutely unable to find any other place of residence suitable for herself and roomers. That the plaintiffs' affidavit does not allege that the premises now held and occupied by the defendant is situated within that parcel of real estate purchased by the Terminal Real Estate Company for the purpose of building a terminal station.

DORA THOMPSON.

Subscribed and sworn to before me this 24th day of July A. D. 1919.

[SEAL.]

PHILIP HERMAN,
Notary Public, D. C.

Motion for Judgment Under Law Rule Number 19.

Filed August 8, 1919.

* * * * * * *

Comes now the plaintiff- by *its* attorneys and moves the Court for judgment for the possession of premises No. 814 Eleventh Street, N. W., Washington, D. C., because the defendant has failed
22 to file a sufficient affidavit of defense as required under Law Rule No. 19 of this Court.

THOMAS P. LITTLEPAGE,
SIDNEY F. TALIAFERRO,
Attorneys for Plaintiffs.

Mr. Julius I. Peyser,
Attorney for Defendant,
Washington, D. C.

DEAR SIR:

Please take notice that the foregoing motion will be called to the attention of the justice presiding on Wednesday, August 20th, 1919, at ten o'clock A. M. or as soon thereafter as counsel may be heard.

THOMAS P. LITTLEPAGE,
SIDNEY F. TALIAFERRO,
Attorneys for Plaintiffs.

Service of copy of the foregoing motion and supporting affidavit accepted this 8th day of August, A. D. 1919.

J. I. PEYSER,
Attorney for Defendant.
P. H.

23 *Affidavit of J. J. Doyle.*

Filed August 8, 1919.

* * * * * * *

STATE OF MARYLAND,
City of Baltimore, ss:

J. J. Doyle, being first duly sworn deposes and says:

That he is the Vice President and General Manager of the Washington, Baltimore and Annapolis Electric Railroad Company, is an officer and director in the Terminal Real Estate Company of Baltimore City, and is one of the co-trustees, plaintiffs in the above entitled cause; that he makes this affidavit in support of a motion for summary judgment under rule 19 of the Supreme Court of the District of Columbia.

The Washington, Baltimore and Annapolis Electric Railroad Company operates its passenger trains from Baltimore and Annapolis in the State of Maryland, to Fifteenth Street and New York Avenue, N. W., Washington, D. C.

The Public Service Commission of the District of Columbia has directed the Railroad Company to secure terminal facilities in the City of Washington to avoid the necessity for its cars standing in the public streets and in compliance therewith the Railroad Company has purchased, or caused to be purchased, a lot of land in the block between Eleventh and Twelfth and "H" Streets and New York Avenue, N. W., and has submitted to the Public Service Commission

a general plan for construction of its tracks and terminal
24 facilities thereon, which plan has been approved by the Commission, and the Railroad Company desires to begin the construction of its tracks upon the aforesaid property at an early date.

The Defendant occupies the premises known as No. 814 Eleventh Street, N. W., the property involved in this case, which is included in the lot of land purchased for the terminal facilities of the Railroad Company as aforesaid and are on the exact location first required by the Railroad Company for its tracks.

A number of suits for possession have heretofore been filed in the Municipal Court and have been disposed of, either by agreement with the parties or by judgment by default, or judgment after trial. The only Municipal Court Suit which has been appealed is the one in which this affidavit is filed.

Unless possession of the premises involved herein can be speedily obtained the Railroad Company's plans for commencing demolition of existing structures and construction work will be delayed. The entire work will have to be held up and there will result very serious and heavy financial loss to the railroad company, due to the fact that the delay in certain stages in this work till cold freezing weather comes on, during which time such work as excavating and concreting are done at enormous and unusual expense, if at all, and the further serious inconvenience to the public at large.

J. J. DOYLE.

Subscribed and sworn to before me this 5″ day of August,
25 A. D. 1919.

[SEAL.] WILLIAM L. SCHULZ,
Notary Public.

My Commission expires May 1920.

Motion to Strike Out Affidavit of J. J. Doyle.

Filed August 19, 1919.

* * * * * * *

Now comes the defendant, by her attorney, and moves the Court to strike out the affidavit of J. J. Doyle, filed by plaintiff, on the following grounds:

1. The said affidavit was not filed within ten days after docketing the appeal, as provided by Rule 19.

2. Rule 19 does not provide for the filing of additional or rebuttal affidavits.

DORA THOMPSON,
Defendant.

JULIUS I. PEYSER,
Attorney for Defendant.

Supreme Court of the District of Columbia.

Friday, September 5, 1919.

Session resumed pursuant to adjournment, Mr. Justice Gould presiding.

* * * * * * *

Come now the parties hereto by their respective attorneys
26 of record; whereupon plaintiffs' motion for judgment for want of a sufficient affidavit of defense under Law Rule 19 of this Court is argued and submitted; upon consideration thereof it is ordered that said motion be and the same is hereby granted.

Wherefore it is considered that the plaintiffs herein do have and recover of the defendant herein possession of the premises No. 814 Eleventh Street, North West, located in the District of Columbia, and recover of said defendant and The Fidelity and Deposit Company of Maryland her surety, the costs of suit, to be taxed by the Clerk, and have execution thereof.

From the foregoing judgment the defendant by her Attorney in open Court, notes an appeal to the Court of Appeals, and the penalty of a bond on said appeal to operate as a supersedeas is hereby fixed in the sum of Three thousand dollars ($3,000).

Memorandum.

September 5, 1919.—Supersedeas bond approved and filed.

Assignment of Errors.

Filed September 10, 1919.

* * * * * * *

Now comes the defendant and says that the Court erred as follows:

27 First: In rendering judgment against the defendant for possession under Rule 19, for the reason that said rule is inconsistent with the statute governing landlord and tenant cases.

Second: That an issue of fact was raised which ought to have been submitted to a jury.

Third: In refusing to strike out the affidavit of J. J. Doyle, filed by plaintiffs more than ten days after docketing the appeal.

Fourth: That plaintiffs did not set forth such a complete cause of action in the affidavit of merit as to justify judgment.

Fifth: That the affidavit of defense filed denied the right of plaintiffs to recover.

Sixth: For other errors that are apparent on the face of the record.

J. I. PEYSER,
Attorney for Dora Thompson.

Certification of Record.

Filed September 10, 1919.

* * * * * * *

The Clerk of the Court will certify the following pleadings and papers in the above entitled cause to the Court of Appeals of the District of Columbia:

1. Complaint and summons of the Municipal Court.
2. Certificate of the Municipal Court on Appeal.
3. Affidavit of plaintiff under rule 19.

28 4. Motion to dismiss affidavit of merit.

5. Affidavit of defense.
6. Affidavit of J. J. Doyle, filed by plaintiffs.
7. Motion for judgment under rule 19.
8. Motion to strike out affidavit of J. J. Doyle.
9. Order of court entered September 5, 1919.
10. Memorandum showing bond approved and filed Sep. 5, 1919.
11. Assignment of errors.

J. I. PEYSER,
Attorney for Dora Thompson.

29 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA,
District of Columbia, ss:

I, John R. Young, Clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages numbered from 1 to 28, both inclusive, to be a true and correct transcript of the record, according to directions of counsel herein filed, copy of which is made part of this transcript, in cause No. 62587 at Law, wherein George Weems Williams and J. J. Doyle, Trustees are Plaintiffs and Dora Thompson is Defendant, as the same remains upon the files and of record in said Court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, in said District, this 10th day of October, 1919.

[Seal Supreme Court of the District of Columbia.]

JOHN R. YOUNG,
Clerk.
By W. E. WILLIAMS,
Assistant Clerk.

Endorsed on cover: District of Columbia Supreme Court. No. 3323. Dora Thompson, Appellant, vs. George Weems Williams et al., Trustees. Court of Appeals, District of Columbia. Filed Oct. 17, 1919. Henry W. Hodges, clerk.

COURT OF APPEALS
DISTRICT OF COLUMBIA
FILED
DEC 20 1919
Henry W. Hodges.
Clerk.

IN THE

Court of Appeals, District of Columbia.

OCTOBER TERM, 1919.

~~3323~~

No. ~~3223.~~

DORA THOMPSON, APPELLANT,

vs.

GEORGE WEEMS WILLIAMS AND J. J. DOYLE,
TRUSTEES, APPELLEES.

BRIEF ON BEHALF OF APPELLANT.

JULIUS I. PEYSER,
Attorney for Appellant.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C.

IN THE

Court of Appeals, District of Columbia.

OCTOBER TERM, 1919.

No. 3223.

DORA THOMPSON, APPELLANT,

vs.

GEORGE WEEMS WILLIAMS AND J. J. DOYLE,
TRUSTEES, APPELLEES.

BRIEF ON BEHALF OF APPELLANT.

Statement of Case.

On February 15, 1917, defendant, appellant, leased from H. R. Howenstein & Company premises No. 814 Eleventh Street Northwest, Washington, D. C., for the term of one year. The said lease expired and defendant has continued in possession of the premises. On June 30, 1919, the hereinnamed plaintiffs, appellees, brought suit in the Municipal Court to recover possession of said premises, claiming that

they were *bona fide* purchasers of the said premises and that they desired the same for their own use and occupancy. After a trial in the Municipal Court judgment was rendered in favor of plaintiffs. From this judgment defendant appealed to the Supreme Court of the District of Columbia. There the case was heard on affidavits prepared and filed under rule 19 of the Rules of Court, and judgment was rendered for the plaintiffs. Thereupon defendant has prosecuted this appeal from the judgment of the Supreme Court.

Assignment of Errors.

First. In rendering judgment against the defendant for possession under rule 19, for the reason that said rule is inconsistent with the statute governing landlord and tenant cases.

Second. That an issue of fact was raised which ought to have been submitted to a jury.

Third. In refusing to strike out the affidavit of J. J. Doyle, filed by plaintiffs more than ten days after docketing the appeal.

Fourth. That plaintiffs did not set forth such a complete cause of action in the affidavit of merit as to justify judgment.

Fifth. That the affidavit of defense filed denied the right of plaintiffs to recover.

Sixth. For other errors that are apparent on the face of the record.

Plaintiffs Did Not Set Forth a Complete Cause of Action in the Affidavit of Merit.

On October 22, 1919, the President of the United States approved the act of Congress, Public, No. 63, 66th Congress.

Section 109 of this act (also known as the Food Control and District of Columbia Rents act) reads:

> "Sec. 109. The right of a tenant to the use or occupancy of any rental property, hotel, or apartment, existing at the time this act takes effect, or thereafter acquired, under any lease or other contract for such use or occupancy or under any extension thereof by operation of law, shall, notwithstanding the expiration of the term fixed by such lease or contract, continue at the option of the tenant subject, however, to any determination or regulation of the commission relevant thereto; and such tenant shall not be evicted or dispossessed so long as he pays the rent and performs the other terms and conditions of the tenancy as fixed by such lease or contract, or in case such lease or contract is modified by any determination or regulation of the commission, then as fixed by such modified lease or contract. All remedies of the owner at law or equity, based on any provision of any such lease or contract to the effect that such lease or contract shall be determined or forfeited if the premises are sold, are hereby suspended so long as this title is in force. Every purchaser shall take conveyance of any rental property, hotel, or apartment subject to the rights of tenants as provided in this title. The rights of the tenant under this title shall be subject to the limitation that the *bona fide* owner of any rental property, apartment, or hotel shall have the right to possession thereof for actual and *bona fide* occupancy by himself, or his wife, children, or dependents, or for the purpose of tearing down or razing the same in order immediately to construct new rental property, hotel, or apartment if approved by the commission, upon giving thirty days' notice in writ-

> ing, served in the manner provided by section 1223 of the act entitled 'An act to establish a code of laws for the District of Columbia,' approved May 3, 1901, as amended, which notice shall contain a full and correct statement of the facts and circumstances upon which the same is based; but in no case shall possession be demanded or obtained by such owner in contravention of the terms of any such lease or contract. If there is a dispute between the owner and the tenant as to the accuracy or sufficiency of the statement set forth in such notice, as to the good faith of such demand, or as to the service of notice, the matters in dispute shall be determined by the commission upon complaint as provided in section 106 of this title."

The affidavit of merit filed by the plaintiffs states:

> "That the plaintiffs, George Weems Williams and J. J. Doyle, hold the fee-simple title to the above-described property as trustees for the *Terminal Real Estate Company of Baltimore City,* and as such trustees have brought suit for possession of the hereinbefore-described real estate."
>
> (Rec., p. 4.)

They do not state at any place in their affidavit that they require the premises for their own use or that they purchased the property for their own use, either as individuals or as trustees of the Baltimore company, but on the contrary they do state that they desire the premises for another and distinct corporation.

> "That for sometime past the passenger cars of the *Washington, Baltimore and Annapolis Electric Railroad Company* have run into Fifteenth Street and New York Avenue Northwest, Washington, D. C., where they remain standing upon the public street until beginning their return trip to Maryland; that the traffic conditions at Fifteenth Street and New York Avenue Northwest have become exceedingly

> congested and acute, so much so that the Public Utilities Commission of the District of Columbia after a full inquiry into the matter a few months ago authorized and directed the said *railroad company* to secure a site and build a terminal in the District of Columbia."
>
> (Pltfs.' Aff., Rec., p. 4.)

This is the use to which the property is to be placed.

On page 4, record, plaintiffs state that "in pursuance of the authority and direction given by the Public Utilities Commission of the District of Columbia the said *railroad company* has acquired a large tract of land, being about one-half of a city block," within which the property in controversy is located. If this is true, then the suit is improperly brought, as it should have been instituted by the *Washington, Baltimore and Annapolis Company*.

But it is believed that the property was bought by Williams and Doyle as trustees for the *Terminal Real Estate Company, Baltimore*. We are therefore confronted with this proposition: Williams and Doyle, trustees for the Baltimore company, purchase a piece of property, not for their own occupancy or for the use of the Baltimore company, but for the use of an entirely distinct corporation, the Washington, Baltimore and Annapolis Electric Railroad Company. It may be admitted that one of these companies is subsidiary to the other, and that some of the officers in one are also officers in the other, but at the same time each of them is a distinct legal entity, capable of suing and being sued (even to the extent of suing each other), of holding, purchasing, and transferring property. The rights of corporations are no greater than are the rights of individuals. It is needless to call to the attention of the court the many cases where a purchaser has sued for possession of his house under the Saulsbury resolution (and it is true that under the Ball bill as well as the Saulsbury resolution the plaintiff must show

that he wants the premises for his own use or for the use of dependents), for the use and occupancy of a member of his family or a relative, and possession has been denied, and properly so. And these two different and distinct corporations, even though there exists between them a legal or artificial relationship, stand exactly the same as two distinct persons. Where one corporation buys property for the use of another and not for its own use, the Ball bill protects the tenant.

Appellees may contend, however, that one corporation may act as agent or trustee for the other. This is admitted provided the charter of the particular corporation allows such a performance. But a careful study of this case does not disclose any such charter being held by the Baltimore company. Nor does the record show that the Baltimore company is acting as agent or trustee for the Washington, Baltimore and Annapolis Company. On the contrary, it is specifically stated that Williams and Doyle are acting as trustees for the Baltimore company, and there any claim of a trusteeship ends.

Possibly the Washington, Baltimore and Annapolis Company is the real, beneficial owner of the property and the intended use, it is believed, is for its benefit. Such being the case, this suit, then, was not brought by the proper party. Title to the property should have been in the Washington, Baltimore and Annapolis Company, and suit should have been brought by it as a *bona fide* purchaser desiring the premises for its own use and occupancy. But inasmuch as this suit was brought by the parties holding the legal title, such suit cannot be maintained unless the parties plaintiff show that they desire the premises for their own use. And this they have failed to do.

It is alleged by the plaintiffs that the "said railroad company proposes to build a large railway terminal station" on the premises involved therein (Rec., p. 5). The attention

of the court is respectfully directed to the fact that a strange corporation, and not the present owners, proposes to build this terminal. Further, the proposed structure is not and will not become a "new rental property, hotel or apartment," as is contemplated by the Ball bill.

And finally, the notice to quit does not "contain a full and correct statement of the facts and circumstances upon which the same is based."

The notice reads:

> "To Miss Dora Thompson,
> No. 814 11th Street Northwest,
> Washington, D. C.:
>
> "As we are purchasers of and necessarily require for our own occupancy, and are therefore desirous to have possession of the house and premises known as No. 814 11th Street Northwest, in the City of Washington, District of Columbia, which you now hold, we hereby give you notice to remove from and quit said premises on the day succeeding the expiration of your next month's tenancy, to wit: May 15th, 1919.
>
> "GEORGE WEEMS WILLIAMS,
> "J. J. DOYLE,
> *Trustees.*"

It is further contended by defendant that a trustee cannot bring a suit in his own name for a beneficial owner. Notice to quit and suit for possession must be brought in the name of the real owner or purchaser who desires the premises for his own occupancy. In Shannon & Luchs *vs.* Lewis, Law, No. 61,434, 46 W. L. R., 513, Mr. Justice Siddons, speaking for the court, held that notice given by the agent of the owner and suit brought by such agent cannot prevail.

Respectfully submitted,

JULIUS I. PEYSER,
Attorney for Appellant.